

ATU

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 422 OF 2015

Surendra Rudra Pratap Singh

Aged about – 30 years, Occ.- Service,
Indian, Inhabitant of Mumbai,
Resident Galli No.12, Ganpat Patil Nagar,
New Link Road, Borivali (West),
Mumbai – 400 103.
(In the Central Jail at Nasik, Maharashtra)

.. Appellant
(Orig. Accused)

Versus

State of Maharashtra

(At the instance of Sr. Inspector of Police,
MHB Colony Police Station, Mumbai)

.. Respondent
(Complainant)

Mr. Sachin B. Chandan, Appointed Advocate for Appellant.
Mr. Ajay Patil, APP for Respondent – State.

CORAM : A.S. GADKARI &
MILIND N. JADHAV, JJ.

RESERVED ON : 15th September 2022.

PRONOUNCED ON : 26th September 2022.

JUDGMENT (PER: MILIND N. JADHAV, J.)

. This Appeal questions the legality of Judgment and Order dated 14th/16th October, 2014 passed by Additional Sessions Judge, Greater Bombay (for short “**Trial Court**”) , in Sessions Case No.22 of 2013 convicting Appellant under Section 235(2) of Criminal Procedure Code, 1973 (for short “**Cr.P.C.**”) for offence punishable under Section 302 of Indian Penal Code, 1860 (for short “**IPC**”) and sentencing him to suffer imprisonment for life and to pay fine of

Rs.25,000/- and in default thereof to suffer further imprisonment for 6 months. Appellant is also convicted under Section 498-A IPC and sentenced to suffer imprisonment for three years and to pay fine of Rs.5,000/- and in default thereof to suffer further imprisonment for 6 months; both sentences to run concurrently.

2. The facts which emerge from the record for consideration are as follows.

2.1. Case of the prosecution is based on two written dying declarations namely Exh.18 and Exh.19 / 19A respectively. Deceased Soni (wife) of Appellant resided along with Appellant and their two children for about 5 – 6 months prior to the date of incident in a slum structure situated in lane No.12, Ganpat Patil Nagar, New Link Road, Borivali (West), Mumbai. Elder daughter Kushi was 4 years old and the younger son was 1 year old. Soni married Appellant in the year 2003. According to prosecution Appellant used to abuse and assault Soni under the influence of alcohol and ill-treat her.

2.2. On 09.10.2012, Appellant returned home under the influence of liquor and quarrelled with Soni. She questioned him about having money to consume liquor and not giving her money to purchase chappal for their children. Appellant being annoyed assaulted her with fist and kick blows. Soni was annoyed and told Appellant to kill her once and for all, upon which Appellant closed the

door, doused Soni with kerosene and set her ablaze with a matchstick. Appellant thereafter rushed out of the house along with the children. Neighbors rushed to help Soni and extinguished the fire. Appellant re-entered the house and took her to Bhagwati Hospital by auto rickshaw and got her admitted. Soni was admitted to the hospital on 09.10.2012 at about 03:30 p.m. and succumbed to the burn injuries on 13.10.2012 between 4:00 to 5:00 p.m.

3. As stated two dying declarations were recorded. First dying declaration was recorded on 09.10.2012 by PW-9 - first Investigation Officer (for short “IO”) immediately on her admission to the hospital whereas second dying declaration was recorded on 13.10.2012 by PW-10 - IO in the presence of PW-4 – Special Executive Officer. The second dying declaration bears endorsement of PW-2 – Doctor Hemant Sanghvi who was treating Soni.

4. Spot panchanama was prepared by PW-9 – IO vide Exh.22. Articles were seized from the spot of incident and sent for forensic investigation and C.A. Report. After demise of Soni, her dead body was sent for autopsy and P.M. report (Exh. 9) was obtained. Statements of witnesses were recorded and investigation completed after which chargesheet was filed in the Court of the learned Metropolitan Magistrate, Borivali, Mumbai.

5. Since the charge under Section 302 is exclusively triable by the Court of Sessions, case was committed to the Sessions Court for trial. Charge was framed below Exh.2 under Sections 498A, 302, 504 and 506 IPC. It read out and explained in vernacular to Appellant to which he pleaded not guilty and claimed to be tried. His defence was that he had been falsely implicated in the crime.

6. To substantiate prosecution case, 11 witnesses were examined. PW-1 – Dr. Dattu Varade carried out autopsy and prepared the P.M. Report. PW-2 and PW-3 are doctors Hemant Sanghvi and Dr. Dnaneshwar Mohare who treated Soni while she was admitted in the hospital. PW-4 – is the Special Executive Officer in whose presence the second dying declaration dated 13.10.2012 was recorded by PW-10 – IO and was endorsed by PW-2 – Dr. Sanghvi. PW-6 and PW-7 are neighbours of Appellant. PW-8 is father of deceased Soni who arrived at the hospital on 12.10.2012 after which the second dying declaration was recorded. PW-9 carried out investigation in the crime until 12.11.2012. PW-10 is the IO who completed the investigation in the case.

7. We have heard Mr. Sachin Chandan, Advocate for Appellant and Mr. Ajay Patil, APP for Respondent – State and with their assistance perused the entire evidence on record.

8. The first dying declaration Exh. 18 was recorded by PW-9 on

09.10.2012 immediately after Soni was admitted to hospital. In this dying declaration Soni has stated that she was cooking food in her house and her husband was playing with her children outside the house; that after filling the stove with kerosene when she lighted matchstick, the stove burst due to which she caught fire. On hearing her screams, Appellant and neighbours arrived and poured water on her to douse the fire.

8.1. In this context, spot panchanama prepared and produced by PW-9 – IO becomes relevant. In the spot panchanama, Exh.22, articles which were recovered from the spot do not throw light upon the theory of bursting of the stove as stated in the statement recorded by Soni on 09.10.2012. If there could have been bursting of stove, then articles relevant to the said incident would have been retrieved from the spot of incident. It is seen that, the spot panchanama reveals the presence of the stove having a vessel with milk inside it on the stove. However, as per spot panchanama the following articles are recovered from the spot, viz; (i) beer bottle; (ii) burnt saree; (iii) bangles; (iv) stove; (v) kerosene can; (vi) tin; (vii) glass bottle and (viii) matchstick. There is no material or evidence recorded in the spot panchnama to prove that there was bursting of stove on that date.

9. PW-2 - Dr. Sanghvi treated Soni after her admission to Bhagwati Hospital. He has deposed that she sustained 85% to 90%

superficial to deep burns. From the medical papers produced on record (Exh.18) it is seen that Soni was admitted to hospital and had sustained 85% to 90% burn injuries. Deposition of PW-6 and PW-7 supports and corroborates the fact that Soni was taken to hospital in an auto rikshaw by Appellant.

10. The second dying declaration i.e. Exh.19 and 19A recorded on 13.10.2012 states that on the day of incident she was cooking food in her house. At that time her husband came in a drunken state and asked her what food she has prepared. Upon this, quarrel ensued between them, due to which Appellant physically assaulted her. Thereafter Appellant poured kerosene on her and set her ablaze. She has further stated that Appellant also threatened her not to disclose this fact to anyone, or he shall harm the children. Due to this, she has not disclosed the true facts.

11. The endorsement on this dying declaration is given by PW-2 the treating doctor and it is recorded in the presence of PW-4 by PW-10 - IO. In reference to the second dying declaration, deposition of PW-8, father of Soni assumes critical significance. PW-8 in his deposition has stated that Appellant subjected Soni to mental and physical cruelty after her marriage. That, after the birth of their first girl child, Appellant did not even come to see the child for more than one year and thereafter he had to summon Appellant before the

panchayat in his village where a settlement took place and thereafter Soni started cohabitating with Appellant. He has deposed that Soni repeatedly informed Appellant about the ill-treatment meted out to her.

12. PW-8 Chandrabhan, father of Soni along with his wife arrived in Mumbai on 12.10.2012 at 12:30 a.m. after learning about the incident. He has deposed that he went directly to meet Soni at Bhagwati hospital and Soni informed him that on the date of incident Appellant came home under the influence of alcohol and when she scolded him he got annoyed and confined her in one room of their slum structure and doused her with kerosene and set her ablaze. He has further deposed that Soni informed him that neighbours gathered at the spot of incident and assaulted Appellant and admitted Soni to the hospital. He has further deposed that Soni informed him that Appellant had threatened her that he would take her children away if she disclosed the incident to anyone and therefore she did not disclose the incident to police. However in contradiction to this deposition, in his cross-examination PW-8 has stated that in marriage Appellant has spent some amount; the mother-in-law being the step mother of Appellant used to torture his daughter. He further stated that he never met his daughter after she came to Mumbai prior to the incident; that neighbours of Soni informed him that Appellant used to beat her

daughter. These admissions given by PW-8 carries significant evidentiary value.

13. As seen from the cross-examination of PW-8 in para No.7, he has admitted that after he arrived in Mumbai, thereafter as per his direction Soni's statement was changed and the Appellant was involved. This admission goes to the root of the matter and negates the second dying declaration given by Soni implicating the Appellant. It clearly appears to us that, Soni was tutored by PW-8 to give second dying declaration in a particular manner to implicate Appellant.

13.1. So far as the first dying declaration is concerned, admittedly it does not bear the endorsement of the doctor. That apart, the first dying declaration is not supported and corroborated by the material evidence gathered by the IO relating to bursting of the stove. Hence both dying declarations cannot be countenanced due to material contradictions in the evidence before us.

14. In view of the above, both dying declarations lose their significance due to contradictory evidence having come on record. Prosecution case now therefore could depend upon the remaining circumstantial evidence i.e. the circumstances propagated by PW-6 and PW-8, neighbors of Appellant. In addition thereto, we may also revisit the statement recorded by IO of the 4 year daughter Kushi of

Appellant and Soni in order to understand as to what had actually transpired on the fateful day and time resulting in the unfortunate incident. Her statement is recorded by PW-10 IO and Trial Court has considered the same in its impugned Judgment. From a reading of the said statement of Kushi it is *prima facie* evident that the said statement supports the version of the Appellant.

15. PW-6 and PW-7 are neighbours of Appellant residing in Galli No.12, Ganpat Patil Nagar, Borivali and knew the Appellant and deceased Soni. Both neighbours are staying 3 – 4 rooms apart from the spot of incident. PW-6 in her deposition has stated that on 09.10.2012 after eating pan when she returned back, she saw smoke coming out from the Appellant's room. PW-6 is declared hostile by the prosecution. In her cross-examination she has stated that on 09.10.2012 she saw smoke coming out of the house of Appellant and several persons gathered outside and were knocking at the door. She saw the door closed and afterwards Appellant came out alongwith his son. She has further deposed that inside the house Soni was set ablaze in flames and neighbours extinguished the fire. That, Appellant informed the neighbours with folded hands to forgive him as he had done nothing. She has stated that he himself took Soni to Bhagwati Hospital thereafter. In her cross-examination, however PW-6 has categorically admitted that she did not enter into the room (spot of

incident) and had not seen the stove. In view of this admission, a doubt is cast upon the evidence and deposition of PW-6. She has further categorically admitted that she was not present at the time of incident and she came to know about the incident from the people gathered on the spot.

16. PW-7 in her cross-examination has deposed that she heard shouts and came out and saw smoke coming out of the house of Appellant and the door was closed. People had gathered there knocking outside the door. She saw Appellant, his children and neighbours extinguishing the fire. She has deposed that Appellant brought Soni outside the room and took her to the hospital. In her cross-examination, PW-7 has stated that she personally did not knock the door nor enter the Appellant's room and only saw Appellant carrying Soni to the hospital. In view of the deposition of PW-6 and PW-7, which probably is the only circumstantial evidence showing nexus of the Appellant with the incident, we find that the same is inadequate and not supported or corroborated by the spot panchanama and recovery panchanama prepared by the IO. It is also seen that both these witnesses have categorically stated that the door of the house where Soni was allegedly set ablaze was locked from the inside and both of them saw after it had opened and Appellant coming out carrying his children and thereafter the Appellant carried Soni

wrapped in a bed sheet to the hospital. The probability of an accident, therefore cannot be ruled out, when Soni might have caught fire while lighting the stove and in order to save the children first, Appellant rushed outside the house with them.

17. From the aforesaid discussion, findings and the record of the case it is also seen that until the mother and father of Soni had reached the hospital in Mumbai, it could be inferred that she was not comfortable because of the alleged threat by Appellant to take away the children. However the admission given by PW-8 father of Soni that, Soni changed her statement at his behest goes to the root of the case and virtually negates and sets at nought the second dying declaration given by Soni. No doubt father of deceased Soni in his deposition stated that there was enmity, it is also to be noted that a substantial part of PW-8's evidence pertains to the enmity between him and Appellant and therefore the admission given by PW-8 in his cross-examination could be held to be true. Hence, there is a possibility that Soni's earlier statement was changed at his behest to indict Appellant.

18. In that view of the matter, the present case of indicting the Appellant for committing the murder of Soni stands on a completely different footing, especially in view of the fact that the second dying declaration stands to be rejected. As discussed above, there appears to

be serious inconsistencies in the statements recorded and the factual circumstances which have been relied upon by the prosecution to indict and convict the Appellant. The chain of circumstance is certainly not proved beyond reasonable doubt.

19. It is also pertinent to note that the Trial Court has taken cognizance of the fact that the statement of Kushi, daughter of Appellant and deceased Soni was also recorded wherein she has stated that on the fateful day there was dispute between her parents and her father had beaten her mother with hands and stick and therefore her mother had got burnt. The Trial Court has further recorded that as per Kushi's statement the neighbours gathered on the spot and extinguished the fire and saved her mother. This statement of Kushi infact supports the case of Appellant and militates against the prosecution case. Kushi has not stated that her mother Soni was doused by kerosene and set ablaze by her father. Though it is also to be considered and noted that Kushi has not been examined by the prosecution nor the defence. That apart, the only evidence against Appellant under Section 498-A IPC is emanating from the deposition of PW-8 and the same is not supported or corroborated by any other material evidence.

19.1. Prosecution has not proved its case on the basis of circumstantial evidence beyond reasonable doubt because of the

serious infirmities which have been noted and alluded to hereinabove.

20. In view of the aforesaid, we find it pertinent to interfere with the findings returned by the learned Trial Court in its Judgment and Order dated 14th October, 2014 and 16th October, 2014 convicting the Appellant for culpable homicide amounting to murder of his wife Soni and extend the benefit of doubt to the Appellant.

21. The impugned Judgment and Order dated 14th/16th October, 2014 passed by the learned Trial Court is therefore quashed and set aside. In the facts and circumstances of the present case, benefit of doubt is therefore extended to the Appellant.

22. Hence, the following Order:-

- (i) Appellant is acquitted from the charge of committing murder of Soni under section 302 and also under section 498-A of IPC;
- (ii) Appellant shall be released from jail immediately, unless required in any other case/cases.

23. Criminal Appeal is allowed in the aforesaid terms.

24. Before parting with the Judgment, we would like to place on record appreciation for the efforts put in by Mr. Sachin B. Chandan, learned Advocate appointed by the High Court Legal Services

Committee, Mumbai for espousing the cause of Appellant; he was thoroughly prepared in the matter and rendered proper and able assistance to the Court.

25. All the concerned to act on an authenticated copy of this order.

26. According to record, Appellant is lodged in Nasik Road Central Prison. The Secretary, High Court Legal Services Committee is hereby directed to communicate this order to the Appellant and also to the Superintendent of Nasik Road Central Prison expeditiously by all possible modes.

[MILIND N. JADHAV, J.]

[A.S. GADKARI, J.]

RAVINDRA
MOHAN
AMBERKAR
Digitally signed
by RAVINDRA
MOHAN
AMBERKAR
Date:
2022.09.26
12:21:17 +0530